

Attorney's Docket No.: 16614-030001 / 0054.13

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Thomas E. Tarara et al.

Art Unit : 1616

Serial No. : 10/612,393

Examiner : Sharmila S. Gollamudi

Filed : July 3, 2003

Title : ENGINEERED PARTICLES AND METHODS OF USE

MAIL STOP RCE

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

INFORMATION DISCLOSURE STATEMENT

Applicants request consideration of the references listed on the attached PTO-1449 form.

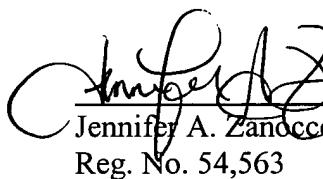
Under 37 C.F.R. § 1.98 (a)(2)(ii), only copies of foreign patent documents and/or non-patent literature are enclosed. Copies of any listed U.S. patents or U.S. patent application publications can be provided upon request.

This filing is being made with the filing of a Request for Continued Examination. No fee is required.

Respectfully submitted,

Date:

May 9, 2006

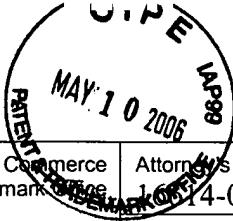

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Substitute Form PTO-1449 (Modified)	U.S. Department of Commerce Patent and Trademark Office	Attorney's Docket No. 16114-030001	Application No. 10/612,393
Information Disclosure Statement by Applicant <small>(Use several sheets if necessary)</small> <small>(37 CFR §1.98(b))</small>		Applicant Thomas E. Tarara et al.	
		Filing Date July 3, 2003	Group Art Unit 1616

U.S. Patent Documents							
Examiner Initial	Desig. ID	Document Number	Publication Date	Patentee	Class	Subclass	Filing Date If Appropriate
	A1	2002/0127188	09/2002	Platz et al.			
	A2	2002/0132787	09/2002	Eljamal et al.			
	A3	2002/0192164	12/2002	Patton et al.			
	A4	2003/0035778	02/2003	Platz et al.			
	A5	2003/0068279	04/2003	Platz et al.			
	A6	2003/0072718	04/2003	Platz et al.			
	A7	2003/0086877	05/2003	Platz et. al.			
	A8	2003/0092666	05/2003	Eljamal et al.			
	A9	2003/0113273	06/2003	Patton et al.			
	A10	2003/0113900	06/2003	Tunnacliffe et al.			
	A11	2003/0171282	09/2003	Patton			
	A12	2003/0185765	10/2003	Platz et al.			
	A13	2003/0198601	10/2003	Platz et al.			
	A14	2003/0203036	10/2003	Gordon et al.			
	A15	2003/0215512	11/2003	Foster et al.			
	A16	2003/0215514	11/2003	Platz et al.			
	A17	2004/0052825	03/2004	Roser et al.			
	A18	2004/0096400	05/2004	Patton et al.			
	A19	2004/0096401	05/2004	Patton et al.			
	A20	2004/0219206	11/2004	Roser et al.			
	A21	2005/0147566	07/2005	Fleming et al.			
	A22	2005/0186143	08/2005	Stevenson et al.			
	A23	2005/0203002	09/2005	Tzannis et al.			
	A24	979993	12/1910	O'Byrne et al.			
	A25	1855591	04/1932	Wallerstein			
	A26	2457036	12/1948	Epstein			
	A27	3362405	01/1968	Hazel			

Examiner Signature	Date Considered
EXAMINER: Initials citation considered. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.	

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U.S. Patent Documents							
Examiner Initial	Desig. ID	Document Number	Publication Date	Patentee	Class	Subclass	Filing Date If Appropriate
	A28	3555717	01/1971	Chivers			
	A29	3619294	11/1971	Black et al			
	A30	3632357	01/1972	Childs			
	A31	3655442	04/1972	Schwer et al.			
	A32	3745682	07/1973	Waldeisen			
	A33	3948263	04/1976	Drake, Jr. et al.			
	A34	3964483	06/1976	Mathes			
	A35	4036223	07/1977	Obert			
	A36	4098273	07/1978	Glenn			
	A37	4102999	07/1978	Umezawa et al.			
	A38	4127502	11/1978	Li Mutti et al.			
	A39	4158544	06/1979	Louderback			
	A40	4159319	06/1979	Bachmann et al.			
	A41	4211769	07/1980	Okada et al.			
	A42	4244949	01/1981	Gupta			
	A43	4153468	03/1981	Lehmbeck			
	A44	4326524	04/1982	Drake, Jr. et al.			
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	A46	4327077	04/1982	Puglia et al.			
	A47	4371557	02/1983	Oppy et al.			
	A48	4407786	10/1983	Drake et al.			
	A49	4452239	06/1984	Malem			
	A50	4484577	11/1984	Sackner et al.			
	A51	4534343	08/1985	Nowacki et al.			
	A52	4588744	05/1986	McHugh			
	A53	4591552	05/1986	Neurath			
	A54	4613500	09/1985	Suzuki et al.			

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U.S. Patent Documents							
Examiner Initial	Desig. ID	Document Number	Publication Date	Patentee	Class	Subclass	Filing Date If Appropriate
	A55	4617272	10/1986	Kirkwood et al.			
	A56	4620847	11/1986	Shishov et al.			
	A57	4659696	04/1987	Hirai et al.			
	A58	4680027	07/1987	Parsons et al.			
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	A60	4701417	10/1987	Portenhauser et al.			
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	A68	4793997	12/1988	Drake et al.			
	A69	4812444	03/1989	Mitsuhashi et al.			
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	A74	4847079	07/1989	Kwan			
	A75	4855326	08/1989	Fuisz			
	A76	4861627	08/1989	Mathiowitz et al.			
	A77	4865871	09/1989	Livesey et al.			
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	A79	4883762	11/1989	Hoskins			
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	A81	4906463	03/1990	Cleary et al.			

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	A83	4942544	07/1990	McIntosh et al.			
	A84	4984158	01/1991	Hillsman			
	A85	4988683	01/1991	Corbiere			
	A86	5006343	04/1991	Benson et al.			
	A87	5011678	04/1991	Wang et al.			
	A88	5013557	05/1991	Tai			
	A89	5017372	05/1991	Hastings			
	A90	5026566	06/1991	Roser			
	A91	5026772	06/1991	Kobayashi et al.			
	A92	5033463	07/1991	Cocozza			
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	A95	5049389	09/1991	Radhakrishnan			
	A96	5089181	02/1992	Hauser			
	A97	5098893	03/1992	Franks et al.			
	A98	5112596	05/1992	Malfroy-Camine			
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	A100	5149653	09/1992	Roser			
	A101	5160745	11/1992	DeLuca, et al.			
	A102	5173298	12/1992	Meadows			
	A103	5200399	04/1993	Wettlaufer et al.			
	A104	5202333	04/1993	Berger et al.			
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	A108	5240712	08/1993	Smith et al.			

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U.S. Patent Documents							
Examiner Initial	Desig. ID	Document Number	Publication Date	Patentee	Class	Subclass	Filing Date If Appropriate
	A109	5240843	08/1993	Gibson et al.			
	A110	5240846	08/1993	Collins et al.			
	A111	5254330	10/1993	Ganderton et al.			
	A112	5270048	12/1993	Drake			
	A113	5284656	02/1994	Platz et al.			
	A114	5290765	03/1994	Wettlaufer			
	A115	5306506	04/1994	Zema et al.			
	A116	5309900	05/1994	Knoch et al.			
	A117	5312335	05/1994	McKinnon et al.			
	A118	5312909	05/1994	Driessen et al.			
	A119	5342625	08/1994	Hauer et al.			
	A120	5348852	09/1994	Bonderman			
	A121	5354562	10/1994	Platz et al.			
	A122	5354934	10/1994	Pitt et al.			
	A123	5366734	11/1994	Hutchinson			
	A124	5380473	01/1995	Bogue et al.			
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	A126	5403861	04/1995	Goldwin et al.			
	A127	5404871	04/1995	Goodman et al.			
	A128	5422360	06/1995	Miyajima et al.			
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	A130	5425951	06/1995	Goodrich, Jr. et al.			
	A131	5453514	09/1995	Niigata et al.			
	A132	5458135	10/1995	Patton et al.			
	A133	5482927	01/1996	Maniar et al.			
	A134	5512547	04/1996	Johnson et al.			
	A135	5518709	05/1996	Sutton et al.			

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U.S. Patent Documents							
Examiner Initial	Desig. ID	Document Number	Publication Date	Patentee	Class	Subclass	Filing Date If Appropriate
	A136	5547696	08/1996	Sorensen			
	A137	5567439	10/1996	Myers et. al.			
	A138	5571499	11/1996	Hafler et al.			
	A139	5580859	12/1996	Felgner et al.			
	A140	5589167	12/1996	Cleland et al.			
	A141	5591453	01/1997	Ducheyne et al.			
	A142	5607915	03/1997	Patton et al.			
	A143	5618786	04/1997	Roosdorp et al.			
	A144	5621094	04/1997	Roser et al.			
	A145	5631225	05/1997	Sorensen			
	A146	5642728	07/1997	Andersson et al.			
	A147	5654278	08/1997	Sorensen			
	A148	5681746	10/1997	Bodner et al.			
	A149	5705482	01/1998	Christensen et al.			
	A150	5707644	01/1998	Illum et al.			
	A151	5728574	03/1998	Legg			
	A152	5733555	03/1998	Chu			
	A153	5766520	06/1998	Bronshtein			
	A154	5775320	07/1998	Patton et al.			
	A155	5780014	07/1998	Eljamal et al.			
	A156	5780295	07/1998	Livesey et al.			
	A157	5849700	12/1998	Sorensen et al.			
	A158	5851453	12/1998	Hanna et al.			
	A159	5891873	04/1999	Colaco et al.			
	A160	5928469	07/1999	Franks et al.			
	A161	5948411	09/1999	Koyama et al.			
	A162	5955448	09/1999	Colaco et al.			

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U.S. Patent Documents							
Examiner Initial	Desig. ID	Document Number	Publication Date	Patentee	Class	Subclass	Filing Date If Appropriate
	A163	5972366	10/1999	Haynes et al.			
	A164	5976436	11/1999	Livesley et al.			
	A165	5993783	11/1999	Eljamal et al.			
	A166	5993805	11/1999	Sutton et al.			
	A167	5994314	11/1999	Eljamal et al.			
	A168	5997848	12/1999	Patton			
	A169	6013638	01/2000	Crystal et al.			
	A170	6019968	02/2000	Platz et al.			
	A171	6034080	03/2000	Colaco et al.			
	A172	6051256	04/2000	Platz et al.			
	A173	6060069	05/2000	Hill et al.			
	A174	6071428	06/2000	Franks et al.			
	A175	6077543	06/2000	Gordon et al.			
	A176	6123924	09/2000	Mistry et al.			
	A177	6123936	09/2000	Platz et al.			
	A178	6136346	10/2000	Eljamal et al.			
	A179	6138668	10/2000	Patton et al.			
	A180	6142216	11/2000	Lannes			
	A181	6165463	12/2000	Platz et al.			
	A182	6187344	02/2001	Elijamal et. al.			
	A183	6190859	02/2001	Putnak et al.			
	A184	6231851	05/2001	Platz et al.			
	A185	6258341	07/2001	Foster et al.			
	A186	6290991	09/2001	Roser et al.			
	A187	6303581	10/2001	Pearlman			
	A188	6303582	10/2001	Eljamal et al.			
	A189	6309671	10/2001	Foster et al.			

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U.S. Patent Documents							
Examiner Initial	Desig. ID	Document Number	Publication Date	Patentee	Class	Subclass	Filing Date If Appropriate
	A190	6313102	11/2001	Colaco et al.			
	A191	6331310	12/2001	Roser et al.			
	A192	6334182	02/2002	Sutton et al.			
	A193	6358530	03/2002	Eljamal et al.			
	A194	6365190	04/2002	Gordon et al.			
	A195	6372258	04/2002	Platz et al.			
	A196	6423334	07/2002	Brayden et al.			
	A197	6423344	07/2002	Platz et al.			
	A198	6426210	07/2002	Franks et al.			
	A199	6468782	10/2002	Tunnacliffe et al.			
	A200	6479049	11/2002	Platz et al.			
	A201	6503411	01/2003	Franks et al.			
	A202	6509006	01/2003	Platz et al.			
	A203	6514496	02/2003	Platz et al.			
	A204	6518239	02/2003	Kuo et al.			
	A205	6565871	05/2003	Roser et al.			
	A206	6569406	05/2003	Stevenson et al.			
	A207	6569458	05/2003	Gombotz et al.			
	A208	6572893	06/2003	Gordon et al.			
	A209	6582728	06/2003	Platz et al.			
	A210	6586006	07/2003	Roser et al.			
	A211	6589560	07/2003	Foster et al.			
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	A213	6630169	10/2003	Bot et al.			
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U.S. Patent Documents							
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	A220	6737066	05/2004	Moss			
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	A223	6811792	11/2004	Roser et al.			
	A224	6825031	11/2004	Franks et al.			
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Examiner Initial	Desig. ID	Document Number	Publication Date	Country or Patent Office	Class	Subclass	Translation
							Yes No
	B1	714998	01/2000	AU			
	B2	902257	08/1985	BE			Abstr.
	B3	0161072	10/1904	DE			
	B4	471490	08/1931	DE			X
	B5	1080265	04/1960	DE			X
	B6	3141498	04/1983	DE			X
	B7	0015123	03/1980	EP			
	B8	0072046	02/1983	EP			
	B9	0090356	10/1983	EP			
	B10	0111216	06/1984	EP			
	B11	0136030	04/1985	EP			
	B12	0139286	05/1985	EP			
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	B14	0222313	05/1987	EP			

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Examiner Initial	Desig. ID	Document Number	Publication Date	Country or Patent Office	Class	Subclass	Translation Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
	B15	0229810	07/1987	EP			
	B16	0257956	03/1988	EP			
	B17	0282179	09/1988	EP			
	B18	0325936	08/1989	EP			
	B19	0356154	02/1990	EP			
	B20	0360340	03/1990	EP			
	B21	0366303	05/1990	EP			
	B22	0383569	08/1990	EP			
	B23	0415567	03/1991	EP			
	B24	0430045	06/1991	EP			
	B25	0433679	06/1991	EP			
	B26	0463653	01/1992	EP			
	B27	0474874	03/1992	EP			
	B28	0520748	12/1992	EP			
	B29	0600730	0/1994	EP			
	B30	0616524	09/1994	EP			
	B31	0714905	06/1996	EP			
	B32	84-03520	06/1984	ES			Abstr.
	B33	2238476	02/1975	FR			Abstr.
	B34	1288094	09/1972	GB			
	B35	1381588	01/1975	GB			
	B36	1477775	06/1977	GB			
	B37	1533012	11/1978	GB			
	B38	2126588	03/1984	GB			
	B39	21878191	01/1987	GB			
	B40	52-139789	11/1977	JP			Abstr.
	B41	58-216695	12/1983	JP			Abstr.

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	B44	62-228272	10/1987	JP			Abstr.
	B45	62-255434	11/1987	JP			Abstr.
	B46	03-038592	02/1991	JP			Abstr.
	B47	06-100464	04/1994	JP			Abstr.
	B48	86/04095	07/1986	WO			
	B49	87/00196	01/1987	WO			
	B50	87/02038	04/1987	WO			
	B51	87/05300	09/1987	WO			
	B52	88/08298	11/1988	WO			
	B53	89/06976	08/1989	WO			
	B54	90/05182	05/1990	WO			
	B55	90/15635	12/1990	WO			
	B56	90/11756	10/1990	WO			
	B57	91/06282	05/1991	WO			
	B58	91/16038	10/1991	WO			
	B59	91/16882	11/1991	WO			
	B60	91/18091	11/1991	WO			
	B61	92/02133	02/1992	WO			
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	B63	93/00951	01/1993	WO			
	B64	93/02834	02/1993	WO			
	B65	93/09832	05/1993	WO			
	B66	93/10758	06/1993	WO			
	B67	93/11746	06/1993	WO			
	B68	93/12240	06/1993	WO			

Examiner Signature	Date Considered
EXAMINER: Initials citation considered. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.	

Substitute Form PTO-1449 (Modified)		U.S. Department of Commerce Patent and Trademark Office	Attorney's Docket No. 16614-030001	Application No. 10/612,393
Information Disclosure Statement by Applicant <small>(Use several sheets if necessary)</small> <small>(37 CFR §1.98(b))</small>		Applicant Thomas E. Tarara et al.		
		Filing Date July 3, 2003	Group Art Unit 1616	

Foreign Patent Documents or Published Foreign Patent Applications							
Examiner Initial	Desig. ID	Document Number	Publication Date	Country or Patent Office	Class	Subclass	Translation
							Yes No
	B69	93/13752	07/1993	WO			
	B70	93/17663	09/1993	WO			
	B71	93/23065	11/1993	WO			
	B72	93/23110	11/1993	WO			
	B73	94/07514	04/1994	WO			
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	B80	95/20979	08/1995	WO			
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	B83	95/33488	12/1995	WO			
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	B86	96/27393	09/1996	WO			
	B87	96/32096	10/1996	WO			
	B88	96/40049	12/1996	WO			
	B89	96/40077	12/1996	WO			
	B90	97/26863	07/1997	WO			Abstr.
	B91	97/34689	09/1997	WO			
	B92	98/24882	06/1998	WO			
	B93	98/58989	12/1998	WO			
	B94	01/87278	11/2001	WO			

Other Documents (include Author, Title, Date, and Place of Publication)

Examiner Signature	Date Considered
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Attorney's Docket No.: 16614-030001 / 0054.13

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Thomas E. Tarara et al.

Art Unit : 1616

Serial No. : 10/612,393

Examiner : Sharmila S. Gollamudi

Filed : July 3, 2003

Title : ENGINEERED PARTICLES AND METHODS OF USE

MAIL STOP RCE

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

AMENDMENT IN REPLY TO ACTION OF FEBRUARY 9, 2006

Please amend the above-identified application as follows:

Amendments to the Claims:

This listing of claims replaces all prior versions and listings of claims in the application:

Listing of Claims:

1. (canceled)
2. (withdrawn) A composition comprising microspheres, wherein said microspheres have a wall thickness of 100 to 500 nm, and a bulk density of no more than 0.1 g/cm³.
3. (withdrawn) The composition according to claim 2, wherein the mean geometric particle size of said microspheres is less than 20 μ m.
4. (withdrawn) A composition comprising microspheres, wherein said microspheres have a wall thickness of 43.5 to 261 nm.
5. (withdrawn) The composition according to claim 2 wherein the walls of said microspheres comprise albumin.
6. (withdrawn) The composition according to claim 2 obtainable by spray-drying a wall-forming material in combination with a blowing agent.
7. (withdrawn) The composition according to claim 2 wherein said microspheres comprise a bioactive agent.
8. (withdrawn) The composition according to claim 7, wherein said microspheres comprise a protein or peptide.

9. (withdrawn) The composition according to claim 7, wherein said microspheres comprise an active agent selected from the group consisting of insulin, growth hormone and interferon.

10. (withdrawn) An inhaler comprising an inhalable formulation of microspheres wherein said microspheres have a wall thickness of 100 to 500 nm, and a bulk density of no more than 0.1 g/cm³ and wherein said microspheres comprise a bioactive agent.

11. (withdrawn) The inhaler according to claim 10, wherein the formulation comprises the microspheres as the sole or the predominant component thereof.

12. (withdrawn) A method for pulmonary administration of a bioactive agent wherein said method comprises the administration to the lungs of a composition which comprises microspheres having a wall thickness of 100 to 500 nm and a bulk density of no more than 0.1 g/cm³, wherein said microspheres further comprise a bioactive agent.

13. (withdrawn) The method according to claim 12, wherein the mean geometric diameter of said microspheres is less than 20 μm .

14. (withdrawn) A method for pulmonary administration of a bioactive agent wherein said method comprises the administration to the lungs of a composition which comprises microspheres having a wall thickness of 43.5 to 261 nm and a bulk density of no more than 0.1 g/cm³, wherein said microspheres further comprise a bioactive agent.

15. (withdrawn) The method according to claim 12, wherein the walls of said microspheres comprise albumin.

16. (withdrawn) The method according to claim 12, wherein said microspheres are obtainable by spray-drying a wall-forming material, in combination with a blowing agent.

17. (withdrawn) The method according to claim 12, wherein said microspheres comprise a

protein or peptide.

18. (withdrawn) The method according to claim 12, wherein said microspheres contain a bioactive agent selected from the group consisting of insulin, growth hormone and interferon.

19. (withdrawn) A method for diagnosis wherein said method comprises administering to a patient in need of such diagnosis, a composition which comprises microspheres having a wall thickness of 100 to 500 nm and a bulk density of no more than 0.1 g/cm³.

20. (withdrawn) The method according to claim 19, wherein the mean geometric diameter of said microspheres is less than 20 μ m.

21. (withdrawn) A method for diagnosis wherein said method comprises administering to a patient in need of such diagnosis, a composition which comprises microspheres having a wall thickness of 43.5 to 261 nm and a bulk density of no more than 0.1 g/cm³.

22. (withdrawn) The method according to claim 19, wherein the walls of said microspheres comprise albumin.

23. (withdrawn) The method according to claim 19, wherein said microspheres are obtainable by spray-drying a wall-forming material, in combination with a blowing agent.

24. (currently amended) A method for preparing microparticles, wherein said method comprises spray-drying wall-forming materials to form said microparticles, wherein said microparticles have a wall thickness of about 100 to 500 nanometers, said wall-forming wall-forming materials include a therapeutic bioactive agent and said method further comprises inclusion of a blowing agent in the feedstock for spray-drying.

25. (previously presented) The method according to claim 24, wherein said blowing agent is selected from the group consisting of ammonium acetate and ammonium carbonate.

26. (previously presented) The method according to claim 24, wherein said wall-forming material is albumin.

27. (withdrawn) A composition comprising microspheres, wherein said microspheres have a wall thickness of 100 to 500 nm, and a bulk density of no more than 0.3 g/cm³.

28. (withdrawn) The composition according to claim 2 wherein the bulk density is no more than 0.05 g/cm³.

REMARKS

Claim Amendments

Claim 24 has been amended to correct a typographical error.

Information Disclosure Statement

Some of the references in the Information Disclosure Statement of November 9, 2005, were not considered. The applicant submits herewith an Information Disclosure Statement with the references that were previously not submitted along with additional references. The applicant requests that the Examiner review the submitted references, initial the PTO-1449 and return the initially PTO-1449 to the applicant.

Rejections Under Section 103

Claims 24 and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 92/18164 (“Sutton”) in view of WO 96/15814 (“Osborne”). The applicant respectfully traverses.

Claim 24 is directed to a method for preparing microparticles. The method comprises spray-drying wall-forming materials. The wall-forming materials include a therapeutic bioactive agent. The method further comprises inclusion of a blowing agent in the feedstock for spray-drying. Claim 26 depends from claim 24.

Sutton describes preparing microcapsules from albumin (Abstract). The microcapsules are injected into a patient and are allowed to flow through the heart, lungs and veins (page 18, lines 13-20). Ultrasonic scanning equipment is used to image the microcapsules in the body to show unusual blood flow within the heart, valvular competence, chamber size, wall motion and indications of myocardial perfusion (page 17, line 21-page 19, line 11). As noted by the Examiner, Sutton does not teach a blowing agent or a bioactive agent as an additive in a spray drying solution.

Osborne describes a process for forming microcapsules from albumin for ultrasound echogenic contrast agents (Abstract). Osborne also fails to teach using a bioactive agent.

Both Sutton and Osborne fail to suggest or disclose therapeutic agents or spray-drying wall-forming materials including a therapeutic bioactive agent therapeutic bioactive agent to form a microparticle. Applicant agrees with the Examiner that “Sutton does not specify the use of a blowing agent or a bioactive agent as the additive in the spray drying solution” (Office Action page 4). However, the applicant does not agree with the Examiner’s rejection based on the teachings of Sutton. The Examiner argues that “One would have been motivated to add a bioactive agent such as a contrast agent or a magnetic resonance imaging agent to the spray solution. A skilled artisan would have been motivated to do so since Sutton teaches the microcapsules are utilized for imaging areas in the body and the inclusion of a contrast agent or a magnetic resonance imaging agent would further enhance the imaging process” (Office action, pages 5-6). The applicant respectfully disagrees with the Examiner’s interpretation of a contrast agent or a magnetic resonance imaging agent as a bioactive agent. While these agents enable a scanner to image the agent within the body, these agents are not necessarily bioactive. Further, the Examiner has ignored the adjective “therapeutic”, as required by claim 24. A contrast agent or a magnetic resonance imaging agent is not intended to be therapeutic, but is rather used to help diagnose or monitor a patient’s condition. Thus, both Sutton and Osborne fail to suggest using a therapeutic bioactive agent. Moreover, nothing in Sutton or Osborne would motivate one to add a therapeutic bioactive agent to the microcapsules of either Sutton or Osborne or a combination thereof. Thus, applicant submits that no *prima facie* case of obviousness has been made with respect to claims 24 and 26.

In addition, claim 39 of U.S. Patent No. 6,416,739 (“Rogerson”) recites a method for preparing microparticles, wherein the method comprises spray-drying wall-forming materials and inclusion of a blowing agent in the feedstock for spray-drying. Claim 39 includes some of the limitations of applicant’s claim 24. According to the Examiner’s arguments, Sutton and Osborne could have been used to reject Rogerson’s claim 39. Accordingly, the office action including the rejection of applicant’s claims should have been signed by the TC Director (See MPEP § 1003).

Claim 25 is rejected as being unpatentable over Sutton in view of Osborne in view of U.S. Patent No. 2,797,201 (“Veatch”). The applicant respectfully disagrees.

Claim 25 depends from claim 24 and necessarily includes the limitations of claim 24.

Veatch describes making hollow particles for low density products, such as linoleum and floor tile, as aggregate in concrete and plaster, plastic foam, gaskets, seals, buoys, flotation equipment, boat hulls and other items (col. 10, lines 27-49).

Veatch does not suggest or disclose a therapeutic bioactive agent. Because each of Sutton, Osborne and Veatch fail to suggest or disclose spray-drying wall-forming materials including a therapeutic bioactive agent therapeutic bioactive agent to form a microparticle, applicant respectfully submits that no *prima facie* case of obviousness has been made for claim 25.

Moreover, Veatch could have been used to reject claim 39 of Rogerson. Veatch describes forming particles with sizes of about 25-250 microns, out of film forming material and a blowing agent (col. 2, lines 21-41, col. 3, lines 4-29, col. 4, lines 65-67). Spray drying is used to form the particles (col. 4, lines 4-7). Because Veatch could have been used to reject claim 39 in Rogerson, the office action including the rejection should have been signed by the TC Director (See MPEP § 1003).

Claims 24 and 25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. 3,957,964 (“Grimm”) in view of U.S. Patent No. 4,180,593 (“Cohan”) or vice-versa. The applicant respectfully disagrees.

Grimm describes forming dentifrice, or toothpaste, having encapsulating shells or coatings therein (Abstract). The encapsulating material can be a synthetic organic polymeric plastic (col. 3, lines 38-41). Materials that might be unstable when distributed throughout the dentifrice, such as fluorides, antibiotics, bactericides and colorants, are encapsulated for release when a user brushes with the dentifrice (col. 2, lines 9-13 and 68 and col. 3, lines 1-28). When chemical interactions with the material are to be avoided, the encapsulation provides a barrier between the encapsulated material and the dentifrice matrix (col. 3, lines 1-27).

Cohan describes forming blown beads which comprise an edible film forming food material (col. 2, lines 14-18).

Both Grimm and Cohan fail to teach or suggest spray-drying wall-forming materials that include a therapeutic bioactive agent. Grimm suggests forming capsules that have antibiotics surrounded by a wall of polymeric plastic. Grimm encapsulates a nucleus of antibiotics, or other unstable substance, to keep the material from being exposed to the surrounding environment. To

put the antibiotics in the coating would be counter to Grimm's purpose. A modification that is counter to the purpose of a prior art reference does not provide adequate motivation for an obviousness rejection (MPEP § 2143.01V "If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)). Cohan is silent regarding a therapeutic bioactive agent. For at least these reasons, the applicant submits that no *prima facie* case of obviousness has been made with respect to claims 24 and 25.

Moreover, according to the Examiner's arguments, Grimm and Cohan could have been used to reject claim 39 of Rogerson. Because the Examiner used Grimm and Cohan to reject applicant's claim 24, the Examiner would have similarly rejected claim 39 in Rogerson. Thus, the office action including the rejection should have been signed by the TC Director (See MPEP § 1003).

Applicant respectfully requests that the obviousness rejections be withdrawn.

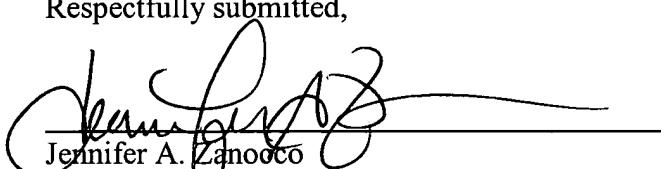
Double Patenting Rejection

Claims 24-26 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 34 of U.S. Patent No. 6,565,885. Applicant respectfully requests that the Examiner hold this rejection in abeyance until the claims are determined otherwise to be allowable.

Please apply the one-month extension of time fee in the amount of 120.00 and any other required charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: May 9, 2006


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Substitute Form PTO-1449 (Modified)		U.S. Department of Commerce Patent and Trademark Office	Attorney's Docket No. 16614-030001	Application No. 10/612,393
Information Disclosure Statement by Applicant (Use several sheets if necessary) (37 CFR §1.98(b))		Applicant Thomas E. Tarara et al.		
		Filing Date July 3, 2003	Group Art Unit 1616	

Examiner Initial	Desig. ID	Document
	C1	Advertisement for "Stop 'n Grow" Manufactured by The Mentholatum Co. Ltd., East Kilbride Scotland G74 5P3
	C2	Agrimi, U. et al., "Amyloid, Amyloid-Inducers, Cytokines and Heavy Metals in Scrapie and Other Human and Animal Subacute Spongiform Encephalopathies: Some Hypotheses", <i>Med. Hypotheses</i> 40(2): 113-116 (1993)
	C3	Ahlneck et al., "The Molecular Basis of Moisture Effects on the Physical and Chemical Stability of Drugs in the Solid State", <i>Int's J. Pharm.</i> 62: 87-95 (1990)
	C4	Akers, M. J. et al., "Glycine Crystallization During Freezing: The Effects of Salt Form, pH, and Ionic Strength", <i>Pharmaceutical Research</i> 12(10):1457-1461 (1995)
	C5	Akoh et al., "One-stage synthesis of raffinose fatty acid polyesters", <i>J. Food Sci.</i> 52:1570-1576 (1987)
	C6	Alberts, B. et al., <i>Molecular Biology of the Cell</i> , 2nd ed., Garland Publishing, Inc., Ch. 2, page 58, (1989)
	C7	Aldous et al., "The Crystallization of Hydrates from Amorphous Carbohydrates", <i>Cryo-Letters</i> 16:181-186 (1995)
	C8	Allen, D. J. et al., "Determination of the Degree of Crystallinity in Solid-Solid Equilibria," <i>J. Pharm. Sci.</i> 58:1190-1193 (1969)
	C9	Allison, S. D. et al., "Mechanisms of Protection of Cationic Lipid-DNA Complexes During Lyophilization", <i>Journal of Pharmaceutical Sciences</i> 89(5): 682-691 (2000)
	C10	Allison, S. D. & Anchordoquy, Thomas J., <i>Lyophilization of Nonviral Gene Delivery Systems, METHODS IN MOLECULAR MEDICINE, NONVIRAL VECTORS FOR GENE THERAPY</i> , Ch. 18, 225-252 (Mark A. Findeis ed., Humana Press, 2001)
	C11	Altenbach et al., "Ca2+ Binding to Phosphatidylcholine Bilayers As Studied by Deuterium Magnetic Resonance. Evidence for the Formulation of a Ca2+ Complex with Two Phosholipid Molecules" <i>Biochem.</i> 23:3913-3920 (1984)
	C12	Anchordoquy, Thomas J. et al., Physical Stabilization of DNA Based Therapeutics, 6(9) DDT 463-470 (May 2001)
	C13	Anekwe, J. et al., "Relaxation Constants as a Predictor of Protein Stabilization," <i>Biocalorimetry: Applications of Calorimetry in the Biological Science</i> , J. E. Ladbury and B. Z. Chowdhry, editors, John Wiley & Sons, pp. 243-251 (1998)
	C14	Babincova et al., "Dextran Enhances Calcium-Induced Aggregation of Phosphatidylserine Liposomes: Possible Implications for Exocytosis", <i>Physiol. Res.</i> , 48(4):319-321 (1999)
	C15	"Drug Absorption and Availability", Modern Pharmaceutics, 3rd edition, G. S. Banker et al. (eds), Marcel Dekker, Inc., pg. 145 (1996)
	C16	Bandara, G. et al., "Interarticular Expression of Biologically Active Interleukin 1-Receptor-Antagonist Protein by Ex Vivo Gene Transfer," <i>Proc. Natl. Acad. Sci.</i> 90:10764-10768 (November 1993)
	C17	Barnett, A. H. "Exhubera Inhaled Insulin: A Review", <i>Int. J. Clin. Pract.</i> 58(4): 394-401 (2004)
	C18	Bell, J. H. et al., "Dry Powder Aerosols I: A New Powder Inhalation Device," <i>J. Pharm. Sci.</i> 60(10): 1559-1564 (October 1971)
	C19	Belopol'skaya, T. V. et al., The Effect of Water as Natural Plasticizer on Thermal Properties of Denatured DNA Studied by Calorimetry 4 VESTNIK SANKT-PETERSBURGSKOGO UNIVERSITETA SERIYA pp. 16-22, abstract only, 2 pgs. (1999)

Examiner Signature	Date Considered
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(37 CFR §1.98(b))				

Other Documents (include Author, Title, Date, and Place of Publication)		
Examiner Initial	Desig. ID	Document
	C20	Biggsbee et al., "Solid State Liability of Insulin: Comparison of Crystalline and Amorphous Forms," <i>Pharmaceutical Research</i> 10(10): Abstract No. PDD 7418, page S-279 (1993)
	C21	Blakeley et al., "Dry instant blood typing plate for bedside use," <i>Lancet</i> , 336: 854-855 (1990)
	C22	Bögelein, J. et al., "Influence of Amorphous Mannitol on Powder Properties of Spray Dried Trehalose/Dextran Mixtures", [on-line] [retrieved September 2005] Retrieved from the Internet <URL: http://www.pharmtech.unierlangen.de/APV_03_abs/bogelein.pdf > 2 pages (2003)
	C23	Bootsma, H.P.R. et al., "β-Cyclodextrin as an Excipient in Solid Oral Dosage Forms: In Vitro and In Vivo Evaluation of Spray-Dried Diazepam-β-Cyclodextrin Products," <i>International Journal of Pharmaceutics</i> 51:213-223 (1989)
	C24	Bosquillon, C. et al., "Aerosolization Properties, Surface Composition and Physical State of Spray-Dried Protein Powders", <i>Journal of Controlled Release</i> 99:357-367 (2004)
	C25	Branca, C. et al., "Destructuring effect of trehalose on the tetrahedral network of water: a Raman and neutron diffraction comparison", <i>Physica A</i> 304:314-318 (2002)
	C26	Branchu, S. et al. "The Effect of Cyclodextrins on Monomeric Protein Unfolding", <i>Biocalorimetry: Applications of Calorimetry in the Biological Science</i> , J. E. Ladbury and B.Z. Chowdhry (eds.), John Wiley & Sons, Ltd., 297-301 (1998)
	C27	Branchu, S. et al., "Hydroxypropyl-β-Cyclodextrin Inhibits Spray-Drying-Induced Inactivation of (β-Galactosidase", <i>Journal of Pharmaceutical Sciences</i> 88(9): 905-911 (1999)
	C28	Brange et al., "Chemical Stability of Insulin. I. Hydrolytic Degradation During Storage of Pharmaceutical Preparations," <i>Pharmaceutical Research</i> 9(6): 715-726 (1992)
	C29	Breitenbach, J. "Melt Extrusion: From Process to Drug Delivery Technology", <i>European Journal of Pharmaceutics and Biopharmaceutics</i> 54:107-117 (2002)
	C30	Broadhead, J. et al., "The Effect of Process and Formulation Variable on the Properties of Spray-Dried β-Galactosidase," <i>J. Pharm. Pharmacol.</i> 46(6):458-567 (June 1994)
	C31	Broadhead, J. et al., <i>The Spray Drying of Pharmaceuticals</i> , 18 Drug Development and Industrial Pharmacy 1169-1206 (1992)
	C32	Brown, "A Therapeutic Panorama of the Spongiform Encephalopathies", <i>Antiviral Chem. Chemother.</i> 1(2): 75-83 (1990)
	C33	Buckton et al., "The Use of Gravimetric Studies to Assess the Degree of Crystallinity of Predominantly Crystalline Powders", <i>Int. J. of Pharm.</i> , 123:265-271 (1995)
	C34	Buitink, Julia et al., <i>High Critical Temperature above Tg May Contribute to the Stability of Biological Systems</i> 79 BIOPHYSICAL JOURNAL 1119-1128 (August 2000)
	C35	Buldt et al., "Neutron Diffraction Studies on Phosphatidylcholine Model Membranes", <i>J. Mol. Biol.</i> 123:673-691 (1979)
	C36	Burvall et al., "Storage of Lactose-Hydrolysed Dried Milk: Effect of Water Activity on the Protein Nutritional Value", <i>Journal of Dairy Research</i> 45: 381-389 (1978)
	C37	Byron, Peter R. et al., <i>Drug Carrier Selection - Important Physicochemical Characteristics</i> RESPIRATORY DRUG DELIVERY, 5th Edition, Interpharm Press, 103-113 (1996)
	C38	Byström et al., "Microcalorimetry - A Novel Technique for Characterization of Powders", <i>Respiratory Drug Delivery IV</i> , 297-302 (1994)
	C39	Carpenter, John F. et al., "Rational Design of Stable Lyophilized Protein Formulations: Some Practical Advice", <i>Pharmaceutical Res.</i> 14:8:969-975 (1997)

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	C40	Casselyn, M. et al., <i>Time-Resolved Scattering Investigations of Brome Mosaic Virus Microcrystals Appearance</i> D58 ACTH CRYST. 1568-1570 (2002)	
	C41	Caughey et al., "Sulphated Polyanion Inhibition of Scrapie-Associated PrP Accumulation in Cultured Cells", <i>J. Virol.</i> 67(2): 643-650 (1993)	
	C42	Cevc, G., "Membrane Electrostatics" <i>Biochim. Biophys. Acta.</i> , 1031(3):311-382 (1990)	
	C43	Chan et al., "Formulation of Vaccine Adjuvant Muramyl dipeptides (MDP). 1. Characterization of Amorphous and Crystalline Forms of a Muramyl dipeptide Analogue", <i>Pharmaceutical Research</i> 5(8): 523-527 (1988)	
	C44	Chan, Hak-Kim et al, "Solid State Characterization of Spray-Dried Powders of Recombinant Human Deoxyribonuclease (RhDNase)", <i>Journal of Pharmaceutical Sciences</i> , 87(5):647-654 (1998)	
	C45	Chan, Hak-Kim et al., "Physical Stability of Salmon Calcitonin Spray-Dried Powders for Inhalation" <i>Journal of Pharmaceutical Sciences</i> 93(3): 792-804 (2004)	
	C46	Chavan, V. et al., "Effect of Rise in Simulated Inspiratory Flow Rate and Carrier Particle Size on Powder Emptying From Dry Powder Inhalers", <i>AAPS Pharmsci</i> 2000; 2(2) article 10 [on-line] Retrieved from the Internet <URL: http://www.pharmsci.org > 7 pages (2000)	
	C47	Chavan, V. et al., "Novel System to Investigate the Effects of Inhaled Volume and Rates of Rise in Simulated Inspiratory Air Flow on Fine Particle Output From a Dry Powder Inhaler", <i>AAPS Pharmasci</i> 2002; 4(2) article 6 [on-line] Retrieved from the Internet <URL: http://www.aapspharmsci.org > 6 pages (2002)	
	C48	Chavan, V. S. et al., "Effect of Particle Size and Rise in Simulated Inspiratory Flow Rate on Device Emptying in a Dry Powder Inhaler System", [on-line] [retrieved 01/07/2005] Retrieved from the Internet <URL: http://www.aapspharmsci.org/abstracts/AM_1999/1001.htm > 1 page (1999)	
	C49	Chawla et al, "Production of Spray Dried Salbutamol Sulphate for Use in Dry Powder Aerosol Formulation", <i>International Journal of Pharmaceutics</i> 108: 233-240 (1994)	
	C50	Chiou et al., "Pharmaceutical Applications of Solid Dispersion Systems", <i>J. Pharm.</i> 60(9): 1281-1302 (1971)	
	C51	Cleland et al, "The Development of Stable Protein Formulations: A Close Look at Protein Aggregation, Deamidation and Oxidation", <i>Critical Reviews in Therapeutic Drug Carrier Systems</i> 10(4): 307-377 (1993)	
	C52	Cline, D. et al., "Predicting the Quality of Powders for Inhalation From Surface Energy and Area", <i>Pharmaceutical Research</i> 19(9):1274-1277 (2002)	
	C53	Cline, D. et al., "Predicting the Quality of Powders for Inhalation", <i>Respiratory Drug Delivery VIII</i> 683-685 (2002)	
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